

2018 Regular Session

SENATE BILL NO. 405

BY SENATOR PRICE

PRESCRIPTION. Provides for the acquisition of blighted property in certain municipalities.
(gov sig)

1 AN ACT

2 To enact R.S. 9:5633.1, relative to three year acquisitive prescription; to provide for
3 acquisition of blighted property in certain municipalities; to provide for the filing of
4 certain affidavits and judgments; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:5633.1 is hereby enacted to read as follows:

7 **§5633.1. Blighted property in certain municipalities; acquisitive prescription**

8 **A. In a municipality that is under a home rule charter, having a**
9 **population between six thousand six hundred fifty and seven thousand six**
10 **hundred fifty, according to the latest federal decennial census, ownership of an**
11 **immovable may be acquired by the prescription of three years without the need**
12 **of just title or possession in good faith. The requirements for the acquisitive**
13 **prescription of three years are as follows:**

14 **(1) The land and all improvements thereon shall be located in the**
15 **municipality and shall have been declared or certified blighted after an**
16 **administrative hearing, pursuant to R.S. 13:2575 or 2576.**

17 **(2) The following documents in Subparagraphs (a) and (c) of this**

1 Paragraph shall be filed in the conveyance records for the parish where the
2 immovable property is situated:

3 (a) An affidavit by the possessor of the immovable property stating the
4 name and address of the possessor, stating the intention of the possessor to take
5 corporeal possession of the immovable property for the possessor's own account
6 in accordance with this Section, stating that such corporeal possession shall
7 commence no sooner than fourteen calendar days after the date of filing of the
8 affidavit and giving a short legal description of the immovable property
9 intended to be possessed.

10 (b) An owner of immovable property having common boundaries with
11 the immovable shall have a first right of possession to such immovable. In the
12 event more than one owner of immovable property having common boundaries
13 with the immovable files the resolution and affidavit as described in
14 Subparagraph (A)(2)(a) of the Section, the owner of property having common
15 boundaries who files first, shall secure the first right to assert possession of the
16 immovable. An owner of immovable property having common boundaries with
17 the immovable has the right to file within fourteen days of the municipality
18 passing the resolution. After fourteen days have elapsed, any interested party
19 may avail himself of the provisions of this Section.

20 (c) There shall be annexed to and filed with the affidavit described in
21 Subparagraph (A)(2)(a) of this Section a certified copy of the judgment, order,
22 declaration, determination, resolution, or ordinance of the municipality,
23 certified by the municipality as a true copy, hereinafter referred to as
24 "resolution" declaring the property as an unoccupied premises, and as either
25 blighted, neglected, littered, abandoned, constituting a public nuisance, in a
26 dangerous and dilapidated condition, in a state of disrepair; overgrown by
27 weeds or grass; or on which junked motor vehicles are parked.

28 (3) Within thirty days after the affidavit and resolution are filed as
29 described in Paragraph (A)(2) of this Section, said resolution and affidavit shall

1 be sent by certified mail, return receipt requested, to the owner at the address
2 shown on the tax rolls of the assessor and to all parties having an interest in the
3 immovable property, as shown by the conveyance and mortgage records, at the
4 address of each party as shown in those records. Failure to adequately comply
5 with this Paragraph shall not be cause for forfeiture of any rights of the
6 possessor granted herein.

7 (4) Within one month after the resolution and affidavit are filed as
8 described in Paragraph(A)(2) of this Section, a notice shall be affixed to at least
9 one prominent location on the immovable, including but not limited to a front
10 door, front gate or entry, or next to a mailbox. The notice shall state the name
11 and address of the possessor; that the possessor intends to take corporeal
12 possession of the immovable for the possessor's own account; and the date that
13 the notice is affixed.

14 (5) The possessor shall take corporeal possession peaceably, and
15 commence within a reasonable time, not to exceed forty-five days, to maintain
16 and repair the property, and shall continue with reasonable diligence to do so
17 and improving its condition, until the property is no longer blighted or in
18 disrepair. The municipality shall have the right to determine if this obligation
19 of the possessor is being completed.

20 (6) All ad valorem taxes, interest, and penalties due and payable shall be
21 paid in full by said possessor.

22 B. If, after notice to the possessor and a contradictory hearing, the
23 municipality determines that the possessor is not complying with the possessor's
24 obligation set forth in Paragraph (A)(6) of this Section or should any possessor
25 seeking to acquire hereunder fail to satisfy any of the requisites for acquisitive
26 prescription listed in Subsection A of this Section, then the right to possession,
27 the running of prescription, and the effect of the affidavits hereunder shall
28 cease, and all rights which may have accrued thereunder shall be terminated,
29 except as specifically set forth herein.

1 C. The possessor shall not demolish any structure on the immovable
2 unless the municipality finds the structure to be a public nuisance and
3 authorizes the demolition.

4 D. If the possessor has met the requisites listed in Subsection A of this
5 Section, the possessor shall not be liable to the owner of the immovable for any
6 tortious act or any civil claim or cause of action related to the possession of the
7 possessor which may have occurred on or after the date that corporeal
8 possession was taken, including but not limited to trespass and demolition of the
9 improvements, and such possessor shall not be subject to criminal prosecution
10 for trespass upon the immovable or for demolition of the improvements.
11 Nothing provided in this Section shall prevent the owner from instituting and
12 prosecuting a real action against the possessor pursuant to Code of Civil
13 Procedure Article 3651 et seq.

14 E(1). In the event the owner is successful in bringing a real action against
15 the possessor pursuant to Code of Civil Procedure Article 3651 et seq., the
16 owner shall reimburse the possessor for all monies advanced by the possessor
17 for attorney fees and costs, tax statements or researches, mortgage, or
18 conveyance certificates, title abstracts, filing fees, postage, copies, printing, the
19 payment of satisfaction of mortgages, judgments, liens, and other
20 encumbrances, plus costs and expenses for cancellation thereof, and for all ad
21 valorem taxes, interest, and penalties paid by the possessor on the immovable,
22 the value of the improvements made or done on the immovable by the possessor
23 after the date that corporeal possession was taken, and the cost or value of any
24 cleaning, clearing, cutting, repairs, rehabilitation, maintenance, removal, work,
25 or demolition to the extent not otherwise included in the value of the
26 improvements and for any other reasonable costs incurred or value of work
27 done by the possessor.

28 (2) In addition to the foregoing reimbursements, all monies advanced by
29 the possessor shall earn, and the possessor shall be entitled to receive legal

1 interest.

2 (3) To prove the cost or value of cleaning, clearing, cutting, repairs,
3 rehabilitation, maintenance, removal, work, or demolition made or done on the
4 immovable and of any times set forth in Paragraph (E)(1) of this Section, the
5 possessor shall provide proof of payment from the persons who performed the
6 work or from whom the materials were purchased or affidavits establishing the
7 hourly rate generally charged for such work in the municipality in which the
8 immovable subject to this Section is located and the number of hours spent on
9 work with reasonable itemization. In the event the owner contests the validity
10 of such documentation, the municipality shall appoint a person to determine the
11 value or cost of said items.

12 F. If the possessor has met the requirements set forth in Paragraphs
13 (A)(2) and (4) of this Section, all expenses and monies for the matters set forth
14 in Subsection E of this Section, that is paid or advanced by or owed to the
15 possessor, plus all accrued interest, shall be secured by a first lien and privilege
16 on the immovable property described in the affidavit filed under Subparagraph
17 (A)(2)(a) of this Section, which lien shall be superior in rank to all prior and
18 subsequently recorded mortgages, judgments, liens, privileges, and security
19 interests. Such lien and privilege shall be in favor of the possessor and, as such,
20 it may be pledged or assigned to secure any loan made to the possessor for the
21 purpose of financing the acquisition of the immovable property subject to the
22 acquisitive prescription provided for in this Section or for the cleaning, clearing,
23 cutting, repairs, maintenance, rehabilitation work, demolition, or for the
24 construction of improvements on or to the immovable property.

25 G(1) If the possessor of any immovable property possessed pursuant to
26 this Section has met the requirements of Paragraphs (A)(1), (2), (3), and (4) of
27 this Section , the holder or holders of any mortgage, lien, privilege, judgment,
28 or security interest encumbering the subject immovable property, other than
29 the possessor, shall not enforce such mortgage, lien, privilege, judgment, or

1 security interest by seizure and sale or other in rem action against such
2 immovable property, and such mortgage, lien, privilege, judgment, or other
3 security interest shall have no effect whatsoever against such party while the
4 possessor or possessors are in corporeal or civil possession of the immovable,
5 and the effect of recordation of the document creating the security interest shall
6 cease as to the immovable upon the possessor acquiring the property by the
7 acquisitive prescription described in this Section. Notwithstanding the
8 foregoing, if the possessor does not comply with the requisites of Paragraphs
9 (A)(2), (3), and (4) of this Section or if a termination as set forth in Subsection
10 B of this Section is made, the prohibition against enforcement as set forth in this
11 Subsection shall terminate.

12 (2) Paragraph (G)(1) of this Section shall not apply to liens imposed by
13 or in favor of the municipality or parish in which the immovable property is
14 located.

15 (3) Upon presentation of evidence to the clerk of court or the recorder
16 of mortgages attached to or made part of an affidavit of any interested party
17 that a possessor under this Section has met all the requirements of this Section
18 and has acquired the ownership of the immovable property pursuant to this
19 Section, the clerk of court or the recorder of mortgages shall cancel and erase
20 all mortgages, judgments, liens, privileges, and security interests, from the
21 records of his office, except liens imposed by or in favor of the municipality or
22 parish in which the immovable property is located.

23 H. The provisions governing acquisitive prescription of ten years and of
24 thirty years apply to the prescription of three years provided herein to the
25 extent that their application is consistent with the prescription of three years.

26 I. Notwithstanding the provisions of Subsection A of this Section, in the
27 event that the possessor rehabilitates or constructs a residential or commercial
28 structure, ownership of the immovable may be acquired by prescription without
29 the need of just title or possession in good faith on the date that a certificate of

1 use and occupancy shall be obtained by the possessor. For the purpose of this
2 Subsection, "residential or commercial structure" shall not include garages,
3 sheds, barns, or other outbuildings.

4 J. In the event the possessor does not comply with the provisions of
5 Subsection A of this Section, or if a termination described in Subsection B of
6 this Section occurs, any interested party required to be approved by the
7 municipality may file in the mortgage records of the parish, a certified copy of
8 the notice of termination described in Subsection B of this Section, which shall
9 be conclusive evidence of the failure of the possessor to comply with the
10 requirements necessary to acquire the immovable property by the prescription
11 provided for in this Section and shall act to nullify the filed affidavit of intent
12 to possess described in Paragraph (A)(2) of this Section, as if the said affidavit
13 was never filed, without any need to have said affidavit canceled or released of
14 record, but the possessor retains all rights to preserve and recover the amounts
15 set forth in Paragraphs (E)(1) through (4), and the lien and privilege set forth
16 in Subsection F and the rights created in Subsection G of this Section.

17 K. The filing or depositing in the conveyance or mortgage records of any
18 forged or wrongfully altered affidavit, notice of resolution, termination,
19 certificate or proof, or mortgage certificate described herein, or containing a
20 false statement or false representation of a material fact, shall be a felony
21 pursuant to R.S. 14:133 and shall be actionable under Civil Code Article 2315.

22 L. This Section shall be liberally construed to encourage and to protect
23 reasonable good faith work and expenditures by the possessor for cleaning,
24 clearing, cutting, maintenance, grass cutting, trash and debris removal, repairs,
25 rehabilitation, maintenance, demolition, and work on or to the subject property
26 or any structures therein.

27 Section 2. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

SB 405 Original

2018 Regular Session

Price

Proposed law provides that in a municipality that is under a home rule charter and has a population between 6,650 and 7,650, according to the latest federal decennial census, upon satisfaction of the following requirements, ownership of an immovable may be acquired by the prescription of three years without need of just title or possession in good faith:

- (1) The land and all the improvements thereon shall be located in the municipality and shall have been declared or certified blighted after an administrative hearing, pursuant to R.S. 13:2575 or 2576.
- (2) Requires the following to be filed in the conveyance records of the parish: an affidavit by the possessor stating the name and address of the possessor, stating the intention of the possessor to take corporeal possession of the immovable property for the possessor's own account, stating that such corporeal possession shall commence no sooner than 14 days from the date of filing of the affidavit and a short legal description of the immovable property intended to be possessed.
- (3) A copy of an order, declaration, determination, resolution or ordinance of the municipality, certified by the municipality as a true copy, declaring the property as blighted property.

Proposed law provides that an affidavit and resolution shall be mailed by certified mail to all interested parties, within 30 days of being filed.

Proposed law provides that a notice, stating the name and address of the possessor, possessor's intent to take possession of the immovable, and the date the notice was posted, shall be affixed on a prominent location on the immovable property within one month after an affidavit and resolution is filed.

Proposed law provides that all ad valorem taxes, interest, and penalties due and payable shall be paid in full.

Proposed law provides that possessor's rights shall be terminated for failure to comply with requirements of proposed law.

Proposed law provides that the possessor shall not demolish the immovable property without authority from the municipality.

Proposed law provides that the possessor shall not be held liable for a cause of action pertaining to the immovable property except causes of actions pursuant to C.Cr.P. Art. 3651. Further provides that the possessor shall not be held criminally responsible for trespass or demolition of the immovable property.

Proposed law provides for reimbursement to the possessor in the event the owner is successful in bringing a real action pursuant to C.Cr.P. Art. 3651. Further provides that possessor shall earn and receive legal interest on all monies paid in advance.

Proposed law provides for certain procedures and requirements in determining cost or value

made or done on the immovable property, for reimbursement purposes. Further provides that monies owed to possessor shall be secured by a first privilege lien.

Proposed law provides that holder of mortgage liens, privileges, judgments, or security interest on the immovable property, other than the possessor, shall not enforce action against the possessor, while the possessor is in possession of the property. Further provides that documents creating a security interest shall cease upon possessor acquiring the property.

Proposed law provides relative to ownership under acquisitive prescription.

Proposed law provides for criminal penalties for false documents filed under proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 9:5633.1)